

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

LMMC, LLC,	§	
	§	
Plaintiff/Counterclaim	§	Case No. 1:23-cv-00950
Defendant,	§	
	§	Assigned Judge: Charles P. Kocoras
v.	§	
	§	Designated Magistrate: M. David Weisman
CALCIUM LLC,	§	
	§	
Defendant/Counterclaim	§	
Plaintiff.	§	

ANSWER TO COUNTERCLAIM

COMES NOW Plaintiff/Counterclaim Defendant LMMC, LLC (“LMMC”), by and through its attorneys, and states as follows for its Answer to Defendant/Counterclaim Plaintiff Calcium LLC’s (“Calcium”) Counterclaim:

PARTIES

1. LMMC admits the allegations contained in Paragraph 1 of the Counterclaim.
2. LMMC admits the allegations contained in Paragraph 2 of the Counterclaim.

JURISDICTION AND VENUE

3. LMMC admits the allegations contained in Paragraph 3 of the Counterclaim.
4. LMMC admits the allegations contained in Paragraph 4 of the Counterclaim.
5. LMMC admits the allegations contained in Paragraph 5 of the Counterclaim.

COUNT I – BREACH OF CONTRACT

6. In response to Paragraph 6 of the Counterclaim, LMMC admits that the parties entered into the document attached as Exhibit A on June 30, 2022. Further answering, LMMC states that Exhibit A speaks for itself and denies all allegations inconsistent therewith. LMMC

denies any remaining allegations contained in Paragraph 6 of the Counterclaim.

7. In response to Paragraph 7 of the Counterclaim, LMMC states that Calcium purports to paraphrase the terms and conditions contained in Exhibit A and further states that Exhibit A speaks for itself and denies all allegations inconsistent therewith. Further answering, Paragraph 7 of the Counterclaim states legal conclusions to which no response is required; but to the extent a response is required, LMMC denies all allegations contained in Paragraph 7 of the Counterclaim.

8. LMMC admits the allegations contained in Paragraph 8 of the Counterclaim.

9. In response to Paragraph 9 of the Counterclaim, LMMC states that Calcium purports to paraphrase the terms and conditions contained in Exhibit A and further states that Exhibit A speaks for itself and denies all allegations inconsistent therewith. Further answering, Paragraph 9 of the Counterclaim states legal conclusions to which no response is required; but to the extent a response is required, LMMC denies all allegations contained in Paragraph 9 of the Counterclaim.

10. In response to Paragraph 10 of the Counterclaim, LMMC states that Calcium purports to paraphrase the terms and conditions contained in Exhibit A and further states that Exhibit A speaks for itself and denies all allegations inconsistent therewith. Further answering, Paragraph 10 of the Counterclaim states legal conclusions to which no response is required; but to the extent a response is required, LMMC denies all allegations contained in Paragraph 10 of the Counterclaim.

11. In response to Paragraph 11 of the Counterclaim, LMMC states that Calcium purports to paraphrase the terms and conditions contained in Exhibit A and further states that Exhibit A speaks for itself and denies all allegations inconsistent therewith. Further answering,

Paragraph 11 of the Counterclaim states legal conclusions to which no response is required; but to the extent a response is required, LMMC denies all allegations contained in Paragraph 11 of the Counterclaim.

12. In response to Paragraph 12 of the Counterclaim, LMMC states that Calcium purports to paraphrase the terms and conditions contained in Exhibit A and further states that Exhibit A speaks for itself and denies all allegations inconsistent therewith. Further answering, Paragraph 12 of the Counterclaim states legal conclusions to which no response is required; but to the extent a response is required, LMMC denies all allegations contained in Paragraph 12 of the Counterclaim.

13. LMMC denies the allegations contained in Paragraph 13 of the Counterclaim.

14. LMMC denies the allegations contained in Paragraph 14 of the Counterclaim.

15. In response to Paragraph 15 of the Counterclaim, LMMC states that Calcium purports to paraphrase the terms and conditions contained in Exhibit A and further states that Exhibit A speaks for itself and denies all allegations inconsistent therewith. Further answering, Paragraph 15 of the Counterclaim states legal conclusions to which no response is required; but to the extent a response is required, LMMC denies all allegations contained in Paragraph 15 of the Counterclaim.

16. In response to Paragraph 16 of the Counterclaim, LMMC states that Calcium purports to paraphrase the terms and conditions contained in Exhibit A and further states that Exhibit A speaks for itself and denies all allegations inconsistent therewith. Further answering, Paragraph 16 of the Counterclaim states legal conclusions to which no response is required; but to the extent a response is required, LMMC denies all allegations contained in Paragraph 16 of the Counterclaim.

17. LMMC admits the allegations contained in Paragraph 17 of the Counterclaim.

18. In response to Paragraph 18 of the Counterclaim, LMMC states that Calcium purports to paraphrase the terms and conditions contained in Exhibit A and further states that Exhibit A speaks for itself and denies all allegations inconsistent therewith. Further answering, Paragraph 18 of the Counterclaim states legal conclusions to which no response is required; but to the extent a response is required, LMMC denies all allegations contained in Paragraph 18 of the Counterclaim.

19. LMMC denies the allegations contained in Paragraph 19 of the Counterclaim as stated.

20. LMMC denies the allegations contained in Paragraph 20 of the Counterclaim.

21. LMMC denies the allegations contained in Paragraph 21 of the Counterclaim.

22. LMMC denies the allegations contained in Paragraph 22 of the Counterclaim.

23. LMMC denies the allegations contained in Paragraph 23 of the Counterclaim.

24. LMMC denies the allegations contained in Paragraph 24 of the Counterclaim as stated.

25. LMMC denies the allegations contained in Paragraph 25 of the Counterclaim.

26. LMMC denies the allegations contained in Paragraph 26 of the Counterclaim.

27. LMMC denies the allegations contained in Paragraph 27 of the Counterclaim.

28. LMMC denies the allegations contained in Paragraph 28 of the Counterclaim.

29. LMMC denies the allegations contained in Paragraph 29 of the Counterclaim.

30. LMMC denies the allegations contained in Paragraph 30 of the Counterclaim as stated.

31. LMMC denies the allegations contained in Paragraph 31 of the Counterclaim.

AFFIRMATIVE DEFENSES

A. In further answer and by way of affirmative defense, Calcium fails to state a claim upon which relief can be granted, including, but not limited to, because Calcium failed to deliver on its promises and obligations under the contract with LMMC.

B. In further answer and by way of affirmative defense, any recovery by Calcium is barred by the doctrines of unclean hands, laches, and estoppel, including, but not limited to, because Calcium made representations and promises about its software capabilities to LMMC, failed to deliver on its representations and promises to LMMC despite being given multiple opportunities, and therefore is in breach of its contractual obligations to LMMC.

C. In further answer and by way of affirmative defense, LMMC's performance under the parties' contract is excused, including, but not limited to, because Calcium made representations and promises about its software capabilities to LMMC and failed to deliver on its representations and promises to LMMC despite being given multiple opportunities.

D. In further answer and by way of affirmative defense, Calcium is barred from recovery because its prior breach of the parties' contract was a superseding and/or intervening cause of its claimed injury.

E. In further answer and by way of affirmative defense, LMMC is released from performance under the parties' contract because of Calcium's prior non-performance.

F. In further answer and by way of affirmative defense, Calcium is barred from recovery because it failed to mitigate its damages.

G. In further answer and by way of affirmative defense, Calcium is barred from recovery because enforcement of the parties' contract would be unconscionable in that Calcium should not be paid for failing to uphold its duties and obligations under the contract.

WHEREFORE, Plaintiff/Counterclaim Defendant LMMC, LLC prays that Defendant/Counterclaim Plaintiff Calcium, LLC's Counterclaim be dismissed with prejudice or that judgment be entered in LMMC's favor on the Counterclaim, that this Court award LMMC is attorneys' fees and costs, and that this Court provide such other and further relief as it deems just and proper.

Dated this 28th day of September, 2023.

Respectfully submitted,

KUTAK ROCK LLP

/s/ Meredith A. Webster

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**ATTORNEYS FOR
PLAINTIFF/COUNTERCLAIM
DEFENDANT LMMC, LLC**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 28, 2023, a true and correct copy of the above and foregoing was filed using the Court's CM/ECF e-filing system, which will send notification of such filing to all counsel of record.

/s/ Meredith A. Webster

Attorney for Plaintiff/Counterclaim Defendant